

The Mental Health Act 1983

an outline guide



For better
mental health



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The vast majority of the people receiving treatment in a mental hospital or psychiatric unit are *informal* patients, which means they are in hospital on a *voluntary* basis and have exactly the same rights as a person being treated for a physical illness.

Formal patients, who constitute about 15 per cent of the mental hospital population, are *compulsorily* detained under a section of the Mental Health Act 1983 and lose some of the rights enjoyed by informal patients.

This booklet gives an outline guide to the main provisions of the Mental Health Act 1983 as they affect *formal* patients and their relatives. Numbers of the relevant section or part of the 1983 Act are indicated in brackets.

Mind's Legal Unit is always happy to offer information and advice on any aspect of mental health law. Ring 020 8519 2122, for advice line opening times, email: legal@mind.org.uk, or write to the address below. Mind also publishes a range of books and booklets that explore different aspects of the Mental Health Act. Details are on Mind's website: www.mind.org.uk, and a free *Publications catalogue* is available from the following address, on receipt of an A4 SAE:

Mind

Granta House, 15–19 Broadway, London E15 4BQ
tel. 0844 448 4448, fax: 020 8534 6399
email: publications@mind.org.uk

Key to abbreviations

ASW	Approved Social Worker
DoH	Department of Health
MHRT	Mental Health Review Tribunal (an independent body that decides whether a formal patient should be discharged)
RMO	Responsible Medical Officer (the doctor in charge of a formal patient's treatment)

Definitions (section 1)

Mental disorder is defined as 'mental illness, arrested or incomplete development of mind, psychopathic disorder and any other disorder or disability of mind'.

Four categories of mental disorder are specified as follows:

- **Mental illness:** not defined.
- **Severe mental impairment:** 'a state of arrested or incomplete development of mind, which includes severe impairment of intelligence and social functioning and is associated with abnormally aggressive or seriously irresponsible conduct on the part of the person concerned'.
- **Mental impairment:** defined in the same way as severe mental impairment except that the phrase 'severe impairment' is replaced by 'significant impairment'.
- **Psychopathic disorder:** 'a persistent disorder or disability of mind (whether or not including significant impairment of intelligence) that results in abnormally aggressive or seriously irresponsible conduct on the part of the person concerned'.

Note: some forms of mental disorder fall outside the scope of these four categories; for example, a state of arrested or incomplete development of mind, which includes severe or significant impairment of intelligence and social functioning, but is *not* associated with abnormally aggressive or seriously irresponsible conduct.

Some sections of the Act apply to people suffering from *mental disorder*, while others apply *only* to people suffering from one of the four specified categories of mental disorder.

See page p. 14 regarding the term 'nearest relative'.

Compulsory admission to hospital or guardianship for patients not involved in criminal proceedings (part II)

Admission for assessment (section 2)

Duration of detention: 28 days maximum.

Application for admission: by an ASW or the patient's nearest relative. The applicant must have seen the patient within the previous 14 days.

Procedure: two doctors must confirm that

- (a) the patient is suffering from a mental disorder of a nature or degree that warrants detention in hospital for assessment (or assessment followed by medical treatment) for at least a limited period; *and*
- (b) she or he ought to be detained in the interests of her or his own health or safety, or with a view to the protection of others.

Discharge: by any of the following

- RMO
- hospital managers
- the nearest relative, who must give 72 hours notice. The RMO can prevent her or him discharging a patient by making a report to the hospital managers
- MHRT. The patient can apply to a tribunal within the first 14 days of detention.

Admission for assessment in cases of emergency (section 4)

Duration of detention: 72 hours maximum.

Application for admission: by an ASW or the nearest relative. The applicant must have seen the patient within the previous 24 hours.

Procedure: one doctor must confirm that

- (a) it is of 'urgent necessity' for the patient to be admitted and detained under section 2; *and*
- (b) waiting for a second doctor to confirm the need for an admission under section 2 would cause 'undesirable delay'.

Note: the patient must be admitted within 24 hours of the medical examination or application, whichever is the earlier, or the application under section 4 is null and void.

Admission for treatment (section 3)

Duration of detention: up to six months, renewable for a further six months, then for one year at a time.

Application for admission: by nearest relative, or ASW in cases where the nearest relative does not object, or is displaced by County Court, or it is not 'reasonably practicable' to consult her or him.

Procedure: two doctors must confirm that

- (a) the patient is suffering from one of the four specified categories of mental disorder (see p. 3) of a nature or degree that makes it appropriate for her or him to receive medical treatment in hospital; *and*
- (b) if the patient is suffering from a psychopathic disorder or mental impairment, such treatment is likely to 'alleviate or prevent a deterioration' of her or his condition; *and*
- (c) it is necessary for her or his own health or safety, or for the protection of others that she or he receives such treatment and it cannot be provided unless she or he is detained under this section.

Renewal: under section 20, the RMO can renew a section 3 detention if the original criteria still apply and treatment is likely to 'alleviate or prevent a deterioration' of the patient's condition. In cases where the patient is suffering from mental illness or severe mental impairment, but treatment is *not* likely to alleviate or prevent a deterioration of her or his condition, detention may still be renewed, if she or he is unlikely to be able to care for her or himself, to obtain the care she or he needs or to guard her or himself against serious exploitation.

Discharge: by any of the following

- RMO
- hospital managers
- the nearest relative, who must give 72 hours notice. If the RMO prevents the nearest relative discharging the patient, by making a report to the hospital managers, the nearest relative can apply to a MHRT within 28 days
- MHRT. A patient can apply to a tribunal once during the first six months of his detention, once during the second six months and then once during each period of one year.

If the patient does not apply in the first six months of detention, her or his case will be referred, automatically, to the MHRT. After that, the case is automatically referred when a period of three years has passed since a tribunal last considered it (one year, if the patient is under 16).

Compulsory detention of informal patients already in hospital (section 5)

A doctor in charge of an informal patient's treatment (**including inpatients being treated for a physical problem**), can detain a patient for up to 72 hours by reporting to hospital managers that an application for compulsory admission 'ought to be made'.

A nurse of the prescribed class (a nurse trained to work with mental illness or learning disabilities) can detain an informal patient **who is receiving treatment for mental disorder** for up to six hours, or until a doctor with authority to detain her or him arrives, whichever is earlier.

Guardianship (sections 7–10)

Duration of guardianship order: up to six months, renewable for a further six months, then for one year at a time.

Application for reception into guardianship: by an ASW or nearest relative.

Procedure: two doctors must confirm that

- (a) the patient is suffering from one of the four specified categories of mental disorder (see p. 3) of a nature or degree that warrants reception into guardianship; *and*
- (b) it is necessary in the interests of the patient's welfare or for the protection of others.

Note: the patient must be over 16. The guardian must be a local social services authority, or person approved by the social services authority, for the area in which she or he (the guardian) lives.

Effect: under section 8, a guardian has the following powers

- to require a patient to live at a place specified by the guardian
- to require a patient to attend places specified by the guardian for occupation, training or medical treatment (although the guardian cannot force the patient to undergo treatment)
- to ensure that a doctor, social worker or other person specified by the guardian can see the patient at home.

Discharge: by any of the following

- RMO
- local social services authority
- nearest relative
- MHRT. The patient can apply to a tribunal once during the first six months of guardianship, once during the second six months and then once during each period of one year.

Mentally disordered persons found in public places (section 136)

Duration of detention: 72 hours maximum.

Procedure: if it appears to a police officer that a person in a public place is 'suffering from mental disorder' and is 'in immediate need of care or control', she or he can take that person to a 'place of safety', which is usually a hospital, but can be a police station. Section 136 lasts for a maximum of 72 hours, so that the person can be examined by a doctor and interviewed by an ASW and 'any necessary arrangements' made for her or his treatment or care.

Warrant to search for and remove patients (section 135)

Duration of detention: 72 hours maximum.

Procedure: if there is reasonable cause to suspect that a person is suffering from mental disorder and

- (a) is being ill-treated or neglected or not kept under proper control; or
- (b) is unable to care for her or himself and lives alone

a magistrate can issue a warrant authorising a police officer (with a doctor and ASW) to enter any premises where the person is believed to be and remove her or him to a place of safety.

Patients involved in criminal proceedings (part III)

Hospital order (section 37)

Duration of order: up to six months, renewable for a further six months, then for one year at a time.

Procedure: a hospital order can be made by the Crown Court, or Magistrates' Court in the case of an offender convicted of an offence that it could punish with a prison sentence (such offences include manslaughter but *not* murder).

The Magistrates' Court can make a hospital order *without* recording a conviction, if an offender is suffering from mental illness or severe mental impairment, and magistrates are satisfied that she or he committed the act as charged.

The court can make a hospital order on evidence from two doctors that

- (a) the offender is suffering from one of the four specified categories of mental disorder (see p. 3) of a nature or degree that makes detention for medical treatment appropriate; *and*
- (b) if the patient is suffering from a psychopathic disorder or mental impairment, such treatment is likely to 'alleviate or prevent a deterioration' of her or his condition; *and*
- (c) taking into account all the relevant circumstances, including the past history and character of the offender and alternative methods of dealing with her or him, a hospital order is the most suitable option.

Discharge: by any of the following

- RMO
- hospital managers
- MHRT. The patient can apply to a tribunal once in the period between six and 12 months after a hospital order is made, and then once during each period of one year. A patient's case is automatically referred to a tribunal when a period of three years has passed since a tribunal last considered it (one year if the patient is under 16).

Restriction order (section 41)

Duration of order: may be specified by the court or without limit of time.

Procedure: the Crown Court that has made a hospital order under section 37 can also impose a restriction order if

- (a) this is necessary to protect the public from 'serious harm' *and*
- (b) at least one of the doctors who made recommendations for the hospital order gave her or his evidence orally.

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A Magistrates' Court cannot make a restriction order, but can commit an offender to a Crown Court so that a section 41 order can be imposed. Patients on restriction orders are usually known as restricted patients.

Discharge: by either

- the Home Secretary *or*
- MHRT. A patient can apply to a tribunal once in the period between six and 12 months after a restriction order is made, and then once during each period of one year. The patient's case is automatically referred to a tribunal when a period of three years has passed since a tribunal last considered it (one year, if the patient is under 16).

Transfer to hospital from prison (section 47)

Duration of detention: up to six months, renewable for a further six months, then for one year at a time. If the Home Secretary imposes a restriction direction (section 49), it continues in force until the earliest date on which the patient would have been released from prison with remission.

Procedure: the Home Secretary orders the transfer, if satisfied by evidence from two doctors that

- (a) an offender has one of the four specified categories of mental disorder, of a nature or degree that makes detention for medical treatment appropriate; *and*
- (b) if the patient has a psychopathic disorder or mental impairment, such treatment is likely to 'alleviate or prevent a deterioration' of this condition.

Discharge: if no restriction direction has been imposed, the patient can be discharged by any of the following

- RMO
- hospital managers
- MHRT. The patient can apply to a tribunal once during the first six months of transfer, once during the second six months, and then once during each period of one year. The Home Secretary must refer her or his case to a tribunal if the MHRT has not considered it in the previous three years (one year if the patient is under 16).

Until the end of her or his prison sentence (allowing for remission), a patient under a restriction direction can only be discharged by the Home Secretary. She or he can apply to a tribunal once during the first six months of transfer, once during the second six months and then once during each period of one year, but an MHRT can only *recommend* to the Home Secretary that the patient be discharged. The Home Secretary may order a return to prison instead. At the end of the prison sentence (allowing for remission), the restriction direction ceases to have effect and the above provisions apply.

Remand to hospital for medical report (section 35)

Duration of remand: up to 28 days, renewable for further periods of 28 days to a maximum of 12 weeks in total.

Procedure: the Crown Court or Magistrates' Court remands the accused person to hospital on evidence from one doctor that

- (a) there is 'reason to suspect' that she or he is suffering from one of the four specified categories of mental disorder (see p. 3); *and*
- (b) it would be 'impracticable' for a report on her or his mental condition to be made if she or he were remanded on bail.

Remand to hospital for treatment (section 36)

Duration of remand: up to 28 days, renewable for further periods of 28 days to a maximum of 12 weeks in total.

Procedure: the Crown Court remands the accused person to hospital for treatment, on evidence from two doctors that she or he is suffering from mental illness or severe impairment, of a nature or degree that makes detention for treatment appropriate.

Interim hospital order (section 38)

Duration of order: 12 weeks, renewable for 28 days at a time, to a maximum of six months in total.

Procedure: the Crown Court or Magistrates' Court makes an interim hospital order on evidence from two doctors that

- (a) a *convicted* offender is suffering from one of the four specified categories of mental disorder (see p. 3); *and*
- (b) there is reason to suppose that it is appropriate for the order to be made.

Note: a hospital order or prison sentence may subsequently be imposed on an offender who has been subject to an interim hospital order.

Hospital and limitation direction (section 45A)

Duration of direction: the same as for a transfer direction under section 47, together with a restriction direction under section 49. The offender may be transferred to prison at any time during her or his sentence, by warrant of the Home Secretary, on the recommendation of her or his RMO or MHRT.

Procedure: if the Crown Court, having considered making a hospital order (section 37), instead imposes a fixed-term sentence of imprisonment, it may direct the immediate admission of the offender to hospital, if it is satisfied by evidence from two doctors that

- (a) she or he suffers from a psychopathic disorder of a nature or degree that makes medical treatment appropriate; *and*
- (b) such treatment is 'likely to alleviate or prevent a deterioration of his condition'.

Discharge: before the end of the prison sentence, the offender can only be discharged by the Home Secretary, on recommendation of the RMO or MHRT. She or he may order a return to prison instead.

At the end of the prison sentence (allowing for remission), the limitation direction ceases to have effect, and the offender is treated as if she or he were on a hospital order (section 37).

Consent to treatment (part IV)

Part IV of the Mental Health Act applies to

- treatments for mental disorder
- all *formal* patients except those who are detained under sections 4, 5, 35, 135 and 136, subject to guardianship or conditionally discharged. These patients have the right to refuse treatment, as have informal patients, except in emergencies.

Part IV states that

- (a) any treatment can be given without the patient's consent, unless the Mental Health Act or DoH regulations specify otherwise
- (b) under section 57, psychosurgery and treatments specified in DoH regulations as giving rise to special concern can only be given if
 - (i) the patient consents; *and*
 - (ii) a multidisciplinary panel appointed by the Mental Health Act Commission confirms that her or his consent is valid; *and*
 - (iii) the doctor on the multidisciplinary panel certifies that the treatment should be given. Before doing so, she or he must consult two people, one a nurse and the other neither a nurse nor a doctor, who have been concerned with the patient's treatment.

Note: as the treatments specified in section 57 give rise to particular concern, this section applies to all formal *and* informal patients.

- (c) under section 58, certain treatments can only be given if
 - (i) the patient consents; *or*
 - (ii) an independent doctor appointed by the Mental Health Act Commission confirms that treatment should be given. Before doing so, she or he must consult two people, one a nurse and the other neither a nurse nor a doctor, who have been concerned with the patient's treatment.

Section 58 applies to treatments named in DoH regulations (including electroconvulsive therapy). Medication can be given without the patient's consent for three months. After that, it is subject to the safeguards laid down in section 58.

Note: under section 62, any treatment for mental disorder can be given without consent in specific emergencies, subject to restrictions when a treatment is irreversible or hazardous.

Additional information

Mental health act commission

A special health authority authorised to keep under review all aspects of the care of formal patients. It can investigate complaints, appoint panels to give a second opinion on consent to treatment, and draw up codes of practice for mental health workers. It comprises approximately 170 part-time commissioners, mainly lawyers and mental health professionals, but also some service users.

Approved social workers

Approved social workers (qualified social workers who have proved their knowledge of mental health and the law) can apply to have people formally detained in hospital under a section of the Mental Health Act 1983. An ASW can make an application for admission where necessary and proper. Before doing so, the ASW must interview the patient and satisfy her or himself that detention in hospital is, in all the circumstances, the most appropriate way of providing the care and medical treatment the patient needs.

Nearest relative

A person's nearest relative has a number of powers under the Act and is identified according to the rules set out in section 26. The nearest relative can apply for their relative to be formally detained under a section of the Act, but in the vast majority of cases it is an ASW who makes an application (see above).

Voting rights for patients

Informal patients have the right to vote, if they enter on the electoral register their last non-hospital address, or an address where they would be if not in hospital.

Most *formal* patients can vote, if they are registered, either at the hospital or at a recent home address. However, those who have been sent to hospital by a criminal court, or transferred from prison, cannot vote.

Providing information to patients

Under section 132, the hospital managers (usually the non-executive directors of the NHS Trusts) have a legal duty to give a formal patient information on:

- the section she or he is detained under
- her or his right to apply to a MHRT
- her or his right to be discharged by the RMO, hospital managers and, if applicable, her or his nearest relative
- consent to treatment rules
- correspondence rules
- the Mental Health Act Commission, including its responsibility to protect formal patients, and its codes of practice.

Managers must also tell the nearest relative when the patient is due to be discharged, *unless* the nearest relative or patient has instructed that this information should not be disclosed.

After-care

Under section 117, Health Authorities and local social services have a legal duty to provide after-care for patients who have been on sections 3, 37, 47 or 48, but who have left hospital. There is no power to charge for section 117 aftercare.

Mind's mission

- Our vision is of a society that promotes and protects good mental health for all, and that treats people with experience of mental distress fairly, positively, and with respect.
- The needs and experiences of people with mental distress drive our work and we make sure their voice is heard by those who influence change.
- Our independence gives us the freedom to stand up and speak out on the real issues that affect daily lives.
- We provide information and support, campaign to improve policy and attitudes and, in partnership with independent local Mind associations, develop local services.
- We do all this to make it possible for people who experience mental distress to live full lives, and play their full part in society.

For details of your nearest Mind association and of local services contact Mind's helpline, *MindinfoLine*: **0845 766 0163** Monday to Friday 9.15am to 5.15pm. Speech-impaired or Deaf enquirers can contact us on the same number (if you are using BT Textdirect, add the prefix 18001). For interpretation, *MindinfoLine* has access to 100 languages via Language Line.

Scottish Association for Mental Health tel. 0141 568 7000

Northern Ireland Association for Mental Health tel. 028 9032 8474

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Mind (National Association for Mental Health)

15-19 Broadway

London E15 4BQ

tel: 020 8519 2122

fax: 020 8522 1725

web: www.mind.org.uk



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